

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DONALD COOPER,	:	
Petitioner,	:	Case No. 3:12cv00059
vs.	:	District Judge Thomas M. Rose Magistrate Judge Sharon L. Ovington
WARDEN, Lebanon Correctional Institution,	:	
	:	
Respondent.	:	
	:	

ORDER

Petitioner is incarcerated in the Lebanon Correctional Institution pursuant to a judgment of conviction entered against him in state court. He seeks a writ of habeas corpus under 28 U.S.C. §2254. The case has been referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b) and the Dayton General Order of Reference.

Upon preliminary consideration pursuant to Rule 4 of the Rules Governing §2254 Cases, the Court finds that it does not plainly appear from the face of the Petition and any exhibits attached thereto that Petitioner is not entitled to relief in this Court. Accordingly, Respondent shall file an Answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases. Specifically, said Answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, Petitioner has exhausted his state remedies, including

delayed appeal, Application to Reopen Appeal under Ohio R. App. P. 26, and Petition for Post Conviction Relief pursuant to Ohio Revised Code §2953.21.

Respondent's Answer shall be accompanied by those portions of the state court record needed to adjudicate this case, appropriately indexed and tabbed. In lieu of these attachments, Respondent may request and the Court will issue a writ of certiorari to the relevant County's Clerk of Courts to produce the complete record.

Respondent is reminded of the requirements in S. D. Ohio Civ. R. 7.2(a)(3):

Memoranda in support of or in opposition to any motion or application to the Court should not exceed twenty (20) pages. In all cases in which memoranda exceed twenty (20) pages, counsel must include a combined table of contents and a succinct, clear and accurate summary, not to exceed five (5) pages, indicating the main sections of the memorandum, the principal arguments and citations to primary authority made in each section, as well as the pages on which each section and any sub-sections may be found.

Additionally, the Court's General Order mandates:

Memoranda in support of or in opposition to any motion shall not exceed twenty pages without first obtaining leave of Court (which in Judge Rose's cases must be requested at least three working days in advance of the deadline for filing the document). The request must include a proposed page length and the reasons for exceeding the usual page limit. If leave of Court is granted, counsel must also comply with the table of contents and summary requirements of S.D. Ohio Civ. R. 7.2(a)(3).

Discovery and Motion Practice §2.2, GENERAL ORDER NO., Day 12-01, Pretrial and Trial Procedures (eff. 2/2/12).

Nothing in this Order is intended to prevent Respondent from filing a Motion to Dismiss or other pleading before filing the complete record if disposition can be made on

an incomplete record.

Petitioner may file and serve a Reply or Traverse to the Answer not later than twenty-one days after the Answer is filed. If Respondent files a Motion to Dismiss, Petitioner's time to file a Memorandum in Opposition will likewise be twenty-one days from service, as provided in S. D. Ohio Civ. R. 7.2(a).

IT IS THEREFORE ORDERED THAT:

1. On or before April 11, 2012, Respondent shall file an Answer in this case conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases; and
2. The Clerk of Court is directed to serve the Petition and a copy of this Order by electronic or regular mail on Respondent and the Attorney General of Ohio, c/o Assistant Attorney General M. Scott Criss, Corrections Litigation, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215-6001.

February 24, 2012

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge